IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5722 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GARASIYA SUKHDEVSINH ALIAS SIKHUBHA NATUBHA

Versus

STATE OF GUJARAT

Appearance:

MR YN RAVANI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/01/2000

ORAL JUDGEMENT

#. Heard Mr. Y.N.Ravani, learned advocate for the petitioner and Mr. K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 29-4-1999 passed by respondent No. 2 - The District Magistrate, Bhavnagar against the petitioner in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the petitioner under Section 9(1) of the PASA, a copy of which is produced at running Page : 20 interalia indicates that in all five prohibition cases were registered against the petitioner at Alang Police Station on 21-7-98, 9-10-98, 24-12-98, 10-3-99 and 4-4-1999 respectively. That in each case, country made liquor has been seized from the possession of the petitioner and except last case, all the cases are pending for trial in the Court. Furthermore, three witnesses on assurance of their anonymity, have given their statement on 18-4-1999 have disclosed the anti social activities of the petitioner and therein, they have referred to the incidents alleged to have been occurred prior to 1 month 20 days and 1 month and 15 days respectively. That on the basis of the said material, the respondent No.2 has come to the conclusion that the petitioner is a bootlegger within the meaning of Section 2(b) of the PASA. That enforcement of general provisions of law not being sufficient to prevent the petitioner from continuing his anti social activities and as such, detention under PASA is necessary, hence the impugned order is passed.

#. The petitioner has challenged the impugned order on numerous grounds. It has been contended at bar on behalf of the petitioner, that the impugned order of detention suffers from the vice of non application of mind. That in each case registered against the petitioner, the petitioner was released on bail. However, while passing the impugned order, the detaining authority has failed to consider the less drastic remedy like cancellation of bail under Section 437(5) of CrPC.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal

No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. On perusal of grounds of detention, it appears that the detaining authority has failed to consider the aspect of claiming of cancellation of bail or opposing the bail. The detaining authority has not at all dealt with the status of the detenu with regard to the cases registered against him as to whether he was in police custody or judicial custody or on bail. Thus, the grounds of detention disclose non application of mind of the detaining authority while passing the impugned order and as such, it cannot be sustained in law.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 29-4-1999 passed by respondent No. 2 - The District Magistrate, Bhavnagar against the petitioner is hereby quashed and set aside. The petitioner - GARASIYA SUKHDEVSINH ALIAS SUKHUBHA NATUBHA is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 24-1-2000 [A.K.Trivedi, J.]

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